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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Robert Douglas Smith,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.
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) No. CV-87-234-TUC-CKJ

) DEATH PENALTY CASE

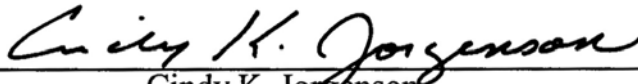
) **ORDER**
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16 In February 2009, the Ninth Circuit Court of Appeals remanded this matter for “an
17 evidentiary hearing on the question whether Smith has established cause and prejudice to
18 overcome the procedural default of his sentencing ineffectiveness claim and such other
19 matters as the court may deem appropriate.” *Smith v. Schriro*, No. 96-99025 (9th Cir. Feb.
20 26, 2009). Following an evidentiary hearing, Chief United States District Court Judge John
21 M. Roll determined that Petitioner failed to establish cause. Subsequently, the Ninth Circuit
22 again remanded for the limited purpose of considering a claim of mental retardation under
23 *Atkins v. Virginia*, 536 U.S. 304 (2002). *Smith v. Schriro*, No. 96-99025 (9th Cir. Sept. 10,
24 2010). The matter was reassigned to the undersigned judge in February 2011, and the Court
25 granted Petitioner’s motion to amend his habeas petition to add several new claims arising
26 from pursuit of state postconviction relief under *Atkins*. (Doc. 269.) The parties filed
27 supplemental briefs addressing the merits of these claims, and the matter is presently under
28 advisement.

1 In the intervening time since Judge Roll's consideration of Petitioner's cause
2 arguments, the United States Supreme Court has issued two opinions addressing cause to
3 excuse procedural default of counsel ineffectiveness claims. *See Martinez v. Ryan*, No. 10-
4 1001, 2012 WL 912950 (U.S. Mar. 20, 2012) (ineffective assistance of state postconviction
5 counsel as cause), and *Maples v. Thomas*, 132 S. Ct. 912 (2012) (abandonment by state
6 postconviction counsel as cause). In light of these new cases, the parties are directed to file,
7 within thirty (30) days of this Order, simultaneous supplemental briefs addressing the effect,
8 if any, of *Martinez* and *Maples* on the cause issue in this case. Such briefs should also
9 address the question of whether the Ninth Circuit's limited *Atkins* remand provides
10 jurisdiction for this Court to reconsider Judge Roll's cause determination, should the Court
11 determine that reconsideration is warranted.

12 **IT IS SO ORDERED.**

13 DATED this 21st day of March, 2012.

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16 Cindy K. Jorgenson
17 United States District Judge
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